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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,768	02/11/2004	George Kadlicko	04095- P0012A	3416
24126	7590	07/26/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			LAZO, THOMAS E	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	

3745

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/776,768

Applicant(s)

KADLICKO, GEORGE

Examiner

Thomas E. Lazo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-11 is/are rejected.
- 7) ☒ Claim(s) 7 and 12-17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 2 is objected to because of the following informalities:

In claim 2, line 1, "claim 2" should be --claim 1--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Myles (4,350,091). Myles discloses a rotary hydraulic machine having a housing 53, a rotating group located within the housing 53 including an inherent plurality of variable capacity chambers defined between pistons slideable within respective cylinders, the pistons being displaceable relative to the cylinders upon rotation of the barrel to vary the volume of the chambers and thereby induce a flow of fluid through the chambers from an inlet port 107 to an outlet port 109 as the rotating group rotates, an adjustment assembly 97,99 including an actuator operable upon the rotating group to adjust the stroke of the pistons in the cylinder and thereby adjust the capacity of the machine, a pressurized fluid source 63 for the actuator, a control valve 93 interposed between the source 63 and the actuator to control flow to the actuator, a hydraulic accumulator 121 to store pressurized fluid from the source 63, and a check valve 89 between the

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accumulator 121 and the source 63 to inhibit flow from the accumulator 121 to the source upon reduction of pressure at the source 63 below that of the accumulator 121, wherein the control valve 93 is a closed centered valve and is moveable from a centered position in which flow to and from the actuator is inhibited to a first position in which flow to the actuator from the accumulator 121 is permitted and to a second position in which flow from the actuator to a drain 67 is permitted, a pair of actuators are utilized in the adjustment assembly 97,99 and when the valve 93 is in the first position, one of the actuators is connected through the valve 93 to the accumulator 121 and the other of the actuators is connected to drain 67, and, when the valve 93 is in the second position, one of the actuators is connected to drain 67 and the other of the actuators is connected through the valve 93 to the accumulator 121.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myles, as applied to claim 3 above, in view of Bojas et al. (3,795,109). Myles discloses all of the claimed subject matter except for each of the actuators being single acting, each of the actuators being a linear actuator having a piston displaceable within a cylinder, and each of the actuators including a spring to bias the actuator to a maximum capacity.

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Bojas et al. teaches for a rotary hydraulic machine having a rotating group 74 located within the housing 28 including a plurality of variable capacity chambers defined between pistons slideable within respective cylinders, the pistons being displaceable relative to the cylinders upon rotation of the barrel 74 to vary the volume of the chambers and thereby induce a flow of fluid through the chambers from an inlet port 80 to an outlet port 86 as the rotating group 74 rotates, and an adjustment assembly including a pair of actuators 132,170 and that each of the actuators is single acting, each of the actuators is a linear actuator having a piston 184,192 displaceable within a cylinder, and each of the actuators includes a spring 135 to bias the actuator to a maximum capacity for the purposes of controlling the displacement of the hydraulic machine. See Bojas et al. col. 5, line 40 – col. 6, line 28.

Since Myles and Bojas et al. are both rotary hydraulic machines, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the actuators of Myles, based on the teachings of Bojas et al., to be single acting, linear actuators having a piston displaceable within a cylinder, and include a spring to bias the actuator to a maximum capacity for the purposes of controlling the displacement of the hydraulic machine.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myles, as applied to claim 3 above, in view of Huffman et al (3,889,467). Myles discloses all of the claimed subject matter except for the accumulator including a piston displaceable within a cylinder by application of fluid pressure against a spring bias, wherein a stop is provided to limit displacement of the piston and thereby limit the force applied by the spring, the spring is a

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mechanical spring located within the cylinder, and the spring is a coil spring and the stop is located within the cylinder and extends through the coil spring.

Huffman et al. teaches for an accumulator including a piston 58 displaceable within a cylinder by application of fluid pressure against a spring bias 65 and that a stop 64 is provided to limit displacement of the piston 58 and thereby limit the force applied by the spring 65, the spring 65 is a mechanical spring located within the cylinder, and the spring 65 is a coil spring 65 and the stop 64 is located within the cylinder and extends through the coil spring 65 for the purposes of limiting the pressure in the accumulator. See Huffman et al. col. 4 lines 18-39.

Since Myles and Huffman et al both involve the use of an accumulator, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the accumulator of Myles, based on the teachings of Huffman et al., to include including a piston displaceable within a cylinder by application of fluid pressure against a spring bias and that a stop is provided to limit displacement of the piston and thereby limit the force applied by the spring, the spring is a mechanical spring located within the cylinder, and the spring is a coil spring and the stop is located within the cylinder and extends through the coil spring for the purposes of limiting the pressure in the accumulator.

***Allowable Subject Matter***

Claims 7 and 12-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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***Prior Art***

Prior art made of record but not relied upon is considered pertinent to Applicant's disclosure and consists of four patents.

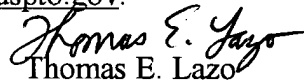
Mitchell, Dantlgraber et al., El Ibarry, and Kent et al. are cited to show rotary hydraulic machines with adjustment assemblies.

***Contact Information***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Thomas Lazo whose telephone number is (571) 272-4818. The examiner can normally be reached on Monday-Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Edward Look, can be reached on (571) 272-4820. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to status of this application or proceeding should be directed to the Patent Application Information Retrieval (PAIR) system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

  
Thomas E. Lazo

Primary Examiner  
Art Unit 3745

TEL  
July 22, 2005